



Appeal Decision

Site visit made on 1 February 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/G5750/C/22/3307869

Land at 57 Salisbury Road, Manor Park, London, E12 6AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Mohammed Nasim against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 2 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of first floor rear extension.
 - The requirements of the notice are to:
 1. Demolish the first floor rear extension (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
 2. On completion of step 1, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of three months and the substitution with eight months for the time for compliance.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Preliminary Matters

3. Since submission of the appeal, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the policies most relevant to the appeal, I have not reverted to the parties for comment.

Main Issues

4. The appellant has raised concern that the Council is trying to introduce living conditions harm as a further reason for issuing the notice. However, the reason for issuing the enforcement notice does allege an unneighbourly form of development, which is often used to infer living conditions harm. Indeed,

relevant Newham Local Plan (LP) Policy SP8 is entitled 'Ensuring Neighbourly Development'.

5. Moreover, the Council's authorising report refers to conflict with its 'Altering and Extending your Home' Supplementary Planning Document (SPD), which states that all new extensions should ensure that the privacy and outlook of neighbouring amenity is not harmfully compromised. Similar living conditions concerns are also expressed by the neighbouring occupier.
6. The main issues therefore are the effect of the extension on:
 - the character and appearance of the area; and
 - the living conditions of neighbouring occupiers of No 55 Salisbury Road, with particular regard to privacy and outlook.

Reasons

Character and appearance

7. The appeal relates to a first floor rear extension to a two storey, end of terrace dwelling. The extension has been built above a pre-existing ground floor extension, and between a smaller first floor extension and the side boundary of the property.
8. The rear of the host terrace is largely characterised by a series of outrigger extensions straddling the boundaries between two properties, which are finished in stock brick, with the same scale, form and spacing. The respective mono-pitched roofs of the individual dwellings combine to create a pitched roof to the outriggers, with a rear facing gable end. The ridgeline for each is commensurate with the bottom of the main roof, thereby revealing a clear eaves line along the rear of the terrace.
9. Despite the numerous additional ground floor extensions, those characteristics combine to create a clear visual flow and rhythm to the terrace.
10. In stark contrast to those characteristic features, the appeal extension has a flat roof that is higher than the ridgeline of the outriggers and obscures the main rear eaves line of the dwelling. As a result, the extension appears bulky and poorly related to the design and proportions of the existing dwelling, and terrace of which it forms part.
11. The highly contrasting painted render finish draws further attention to the development, and thus does not amount to a complementary or appropriately contrasting finishing material, as recommended by the Council's Altering and Extending your Home SPD.
12. In overall terms, the extension amounts to a discordant and harmful addition which abruptly terminates the visual flow and rhythm of the terrace, provided by the outriggers, the rear eaves line and the use of vernacular finishing materials. The harm to the terrace is not justified or materially mitigated by the extension being about the same depth as the outriggers, or the presence of the four-storey block of flats close to the eastern boundary of the site.
13. I appreciate that the extension is largely screened from the public highway, but it is clearly visible from the rear of neighbouring terrace properties and

adjacent flats. It is also likely visible from the neighbouring school buildings and grounds.

14. I therefore find that the development results in unacceptable harm to the character and appearance of the area, contrary to LP Policies SP1 and SP3, paragraph 135 of the Framework, and the Altering and Extending your Home SPD. Those highlight, amongst other things, the importance of analysis of local character and the specific attributes of the site, seeking to reinforce or create positive local distinctiveness, whilst securing integration and coherence with the local context.
15. The Council also cite conflict with London Plan Policies D1 (London's form, character and capacity for growth) and D4 (delivering good design) and LP Policies S6 (Urban Newham), SP2 (healthy neighbourhoods) and SP5 (heritage and other successful place-making assets). However, the specifics of those policies have limited relevance to this main issue concerning a rear householder extension.

Living conditions

16. The extension is positioned immediately adjacent to the side boundary with No 55, and very close to the first-floor window in the main rear elevation of that dwelling. As a result, the outlook from that window is now channelled between the full length of the appeal extension and the pitched roof of its own outrigger. The extension will therefore visually dominate the outlook from that window and result in an undue sense of visual confinement.
17. Because of the size and proximity of the extension to the same first-floor window in No 55, there is also likely to be some loss of natural daylight reaching inside the room served by it.
18. Given the proximity of the four storey flats, the extension is unlikely to have unacceptably affected the levels of direct sunlight entering the rear facing windows of No 55, beyond pre-existing levels.
19. As the extension is roughly in the same plane as the rear facing first floor window in the outrigger at No 55, natural light levels reaching the same will not be materially affected. Moreover, because the ground floor extension at No 55 projects beyond the extension at the appeal property, levels of natural light reaching any window in the rear facing elevation will also be largely unaffected.
20. Although there is a balcony running across the width of the extension, it is of limited depth and functionality. Indeed, there is insufficient space for even a chair to sit out. Consequently, the balcony is likely to be little used and an unacceptable loss of privacy would be avoided.
21. Moreover, the windows in the rear outrigger elevations of the terrace already result in mutual overlooking into the rear gardens of neighbouring properties. As the windows and patio doors in the rear wall of the extension are in a similar alignment to those windows, the levels of overlooking achieved is not dissimilar to that which already occurs in the area generally. The extension does not therefore result in an unacceptable loss of privacy to users of the neighbouring garden at No 55.
22. Nevertheless, I find that the extension does result in unacceptable harm to the living conditions of the occupants of No 55 through loss of outlook, as well as

some loss of daylight. The development is not therefore supported by LP Policy SP8, which expects, amongst other matters, all development to achieve good neighbourliness by avoiding negative and maximising positive social, environmental and design impacts for neighbours on and off the site.

Alternative scheme

23. The appellant has submitted an alternative scheme, which he submits, without prejudice to the merits of the existing development, would further reduce the visual impact of the extension.
24. Caselaw¹ directs that, so long as there is an appeal on ground (a), I must consider whether the modified development would be 'part of the matters' and should be permitted. Such options should be considered under ground (a), even though the actual application under ground (a) relates to the development as built. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker².
25. The plans show an alternative extension that would leave a gap of around 1.5m between the boundary with No 55 but would be positioned closer to the south-eastern boundary. Although it would remain a first floor rear extension, its footprint and shape would differ and instead of a flat roof, it would have a tiled mono-pitched roof. The balcony would be removed and a conventional casement window would replace the existing windows and patio doors. The plans also appear to show that the extension would be finished in brick, rather than painted render.
26. Although virtually any alternative scheme is likely to involve at least some element of new work, the extent of the work in this case would likely be substantial, if not, a complete new build. The modified scheme would not therefore form part of the matters stated in the enforcement notice and would be materially different. Consequently, the works would not fall within the statutory powers open to me to grant planning permission under s177(1)(a) of the 1990 Act.

Other Matters

27. The pre-existing building evidently provided three, first floor bedrooms³. Consequently, the loss of the bedroom in the extension, would not result in the loss of a family home.
28. Nevertheless, I sympathise that the removal of the extension, and the associated loss of a bedroom, will be very disruptive to the appellant and his family, and no doubt will also be costly. The appellant states that he would have to move to an alternative family home. However, it is not shown that the existing accommodation could not be reconfigured so that the first floor room annotated as a study could not be used as a third bedroom.
29. I understand the practical difficulties arising from the existing smaller flat roof extension, but again, it is not shown that other design solutions have been considered which would provide the extra bedroom whilst avoiding the above

¹ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

² *R (oao Banghard) v Bedford BC* [2017] EWHC 2391 (Admin)

³ Despite the third bedroom being labelled as a study

explained harm to the character and appearance of the area and the living conditions of the occupants of the neighbouring property, which outweigh the benefits identified by the appellant.

30. For those reasons, the development does not, in overall terms, meet the social and environmental objectives of sustainable development and thus does not benefit from a presumption in favour of the same. I acknowledge that the development would have generated some modest economic benefits during construction, but those are likely to have been very modest.
31. I sympathise with the health issues experienced by the neighbouring occupier and I note the concerns expressed over the prevailing circumstances of when the extension was built. I also appreciate the concerns that the extension was built without planning permission and the appellant's regret in that regard, and that he may have been mis-advised. Nevertheless, the enforcement procedure is intended to be remedial rather than punitive and I have considered the extension on its own merits.
32. Lastly, the courts have in general taken the view that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, cannot be a material consideration.

Conclusion

33. For the reasons given above, I conclude that the extension is contrary to the development plan as a whole and that the ground (a) appeal should not succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (f)

34. The appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
35. The breach in this case is the erection of a first floor rear extension. The requirements are to demolish the extension and to remove all materials and debris arising. The purpose of the notice is therefore to remedy the breach. Consequently, the appeal on ground (f) can only succeed if it is shown that the steps set out in the notice are excessive for that purpose.
36. As noted, the appellant argues that the submitted alternative scheme would reduce the visual impact of the extension. However, even if I found that the alternative scheme would overcome the above explained harms, it would not, for the reasons explained, form part of the matters such that it would be open to me to grant planning permission under s177(1)(a) of the 1990 Act. Moreover, it is not shown that there are any other lesser steps that would remedy the breach of planning control.
37. I find that the requirements of the notice tally with the allegation and are not excessive but are necessary to remedy the breach. The appeal on ground (f) must fail.

The Appeal on Ground (g)

38. The appellant considers that the three months given to comply with the enforcement notice is too short because the works will involve noisy and

disruptive building operations and activities that would be wholly unsuitable immediately adjacent to neighbouring residential dwellings.

39. However, I am mindful that the extension was erected under the same constraints and I see no reason why its removal could not be managed and mitigated without undue harm arising.
40. It is also argued that such building work would render the property uninhabitable and that existing occupiers will need to find alternative accommodation for the duration of the building work. A twelve month compliance period is requested to enable residents to do that and for the works to be carried out.
41. However, it is not shown that the existing dwelling would be uninhabitable whilst the works are ongoing, and that it would not be possible to put in place appropriate partitions. A twelve-month period is not therefore justified on those grounds.
42. Nevertheless, I am mindful that the loss of the extension will be disruptive to the appellant and his family, and he will need to find and appoint a builder to carry out the works, which are not insignificant. Moreover, the appellant is evidently looking to secure an alternative scheme which provides the additional space. A compliance period of eight months would therefore strike a reasonable and proportionate balance between the public interest in this case and allowing the appellant sufficient time to explore such options and to submit a planning application.
43. I shall therefore vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR